

WORKGROUP #3

Committee on Improving Judicial Oversight and Processing of Probate Court Matters
May 17, 2011 v3.0

Form 5. CONSERVATOR'S ACCOUNT WITH BUDGET [UNFINISHED]

Name of Person Filing Document: _____
Address: _____
City, State, Zip Code: _____
Telephone Number: _____
Attorney Bar Number (if applicable): _____
Licensed Fiduciary Number (if applicable): _____
Representing Self or Attorney for: _____

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF «COUNTY»

IN THE MATTER OF THE
CONSERVATORSHIP FOR

«Protected Person's Name»,

- ☐ a Minor
☐ an Adult

NO. «CaseNo.»

CONSERVATOR'S ACCOUNT
☐ WITH PROPOSED BUDGET

(Assigned to the Honorable
«Judicial Officer»)

REQUIRED ATTACHMENTS, which are to be attached in the following order:

- ☐ SCHEDULE 1: Statement of Income and Expenditures
- ☐ SCHEDULE 2: Updated Inventory & Reconciliation
- ☐ RECENT BANK STATEMENT for each bank account.
- ☐ Supporting Detail required for SCHEDULE 1
- ☐ Supporting Detail required for SCHEDULE 2
- ☐ TRANSACTION LOG, detailing all financial transaction during the reporting period, reported by category.

1. Identify any assets that will be liquidated prior to the next Conservator's Account:

Form 5. Continued

WARNING TO RECIPIENT OF THIS REPORT: THE CONSERVATOR'S ESTIMATES AND ANALYSIS OF AVAILABLE ASSETS, LIABILITIES, ANNUAL EXPENDITURES, ANNUAL INCOME AND PROJECTED LIFESPAN OF THE PROTECTED PERSON ARE A GOOD FAITH ESTIMATE BASED UPON THE INFORMATION THAT IS REASONABLY AVAILABLE TO THE CONSERVATOR CONCERNING THE SUBJECT PERSON. THIS INFORMATION IS PROVIDED FOR THE LIMITED PURPOSE OF ASSISTING THE COURT IN ITS OVERSIGHT OF THIS CONSERVATORSHIP. OTHER PERSONS SHOULD NOT RELY ON THIS INFORMATION BUT SHOULD REACH THEIR OWN CONCLUSIONS.

2. What is the Conservator's estimate of the projected remaining lifespan of the subject person?

_____ years

As required by Rule of Probate Procedure 30.3, disclose and explain whether the Conservatorship is Sustainable for the Projected Lifespan of the Protected Person, including fully disclosing any assumptions. Sustainability is defined to occur when the following equation is true:

$$\frac{(\text{«Available Assets»} - \text{«Liabilities of the Estate»})}{(\text{«Annual Expenditures»} - \text{«Annual Income»})} \geq \text{«Projected Lifespan»}$$

3. Is this Conservatorship sustainable for the projected lifespan of the subject person:

☐ True, Sustainable

☐ False, NOT Sustainable

4. If the Conservatorship is NOT sustainable, describe the management plan for the Conservatorship, since the Assets of the Conservatorship are insufficient to meet the Projected Lifespan of the Protected Person:

Form 5. Continued

CONSERVATOR'S ACKNOWLEDGEMENT

I, the undersigned, acknowledge that I have read this Conservator's Account and Budget and, after reasonable inquiry, have a good faith belief that the information in this report is true, accurate and complete to the best of my knowledge and belief.

<<Conservator Name>>

<<Date>>

Form 5. Continued

INSTRUCTIONS FOR FORM 5

These instructions are intended to assist the conservator in meeting the obligation to file required reports with the Court. All references in these instructions to "you" refer to the conservator.

Generally, each approved conservator's account and approved budget covers a one year period, such that each reporting period is referred to as a year. However, a reporting period may cover a different period of time, either longer or shorter than a year, if ordered by the Court, depending on the circumstances of each individual case.

By court rule, the first conservator's account covers a period that ends nine months after the issuance of your Letters as Conservator, and your first conservator's account will be due 90 days later. See Rule 30, Arizona Rules of Probate Procedure. However, please review the Court's orders in your particular case, which may establish a different end date or different due date for your conservator's account, just as the Court may establish other special requirements that you are required to follow since every conservatorship is unique to some degree.

Form 5 consists requires certain attachments, including two required schedules, specifically SCHEDULE 1: Statement of Receipts and Disbursements, and SCHEDULE 2: Statement of Net Assets & Reconciliation. You should complete both required schedules prior to completing Form 5, because this form refers to information that is computed on the required schedules.

SCHEDULE 1: Statement of Receipts and Disbursements

Column Instructions:

The columns are divided into three basic categories: Column A relates to the past, meaning information that was previously reported; Columns B through E relate to the present, meaning information that you are reporting for the year just ended; and Columns F and G describe the future, the year that is just beginning.

You may be required to use all of the columns in SCHEDULE 1 or just some of the columns, depending if the report covers a new or existing conservatorship and whether the Court requires an operating budget.

Column A: Complete Column A if a SCHEDULE 1 was filed last year; this information is

presented for comparison purposes only, and can be copied directly from Column C of last year's SCHEDULE 1, including the starting and ending dates. If the conservatorship was in existence last year, but you were appointed as a successor conservator and this is your first conservator's account, you will still include your predecessor's information in Column A (if a final SCHEDULE 1 was filed by the prior conservator), but you are not attesting to the accuracy of this information and are not responsible for verifying the activity reported by the prior conservator.

Column B: If you were required to file a budget for the year just ended, you must report the budget for the year just ended in Column B. Please note: if the budget was amended during the year, report the final amended budget in Column B and describe the amendments as supporting detail to SCHEDULE 1.

Column C: Complete "Column C" to report the conservator's account for the year just ended. This is the column where the actual income and expenditures for the year just ended are reported.

Columns D & E: If you are required to complete Columns B and C, then you will also compute Columns D and E, which show the dollar amount and percent of deviation, respectively, from the budget as compared to the actual results. The formulas to calculate the deviation are shown in the headers to Columns D and E.

Column F: Complete Column F if the court requires a budget for the year that is just beginning. This is where you propose a budget for income and expenditures for the coming year. If you were recently appointed as conservator and the court has directed you to file a first budget, you can accomplish this task by completing only Column F on SCHEDULE 1.

Column G: Finally, if you are required to complete both Columns C and F, then you will compute Column G to show the dollar amount for changes to the proposed budget as compared to last year's actual results. The formula to calculate the change is shown in the header to Column G.

Line Instructions:

Once you have determined which columns of SCHEDULE 1 you are required to complete, please complete each row as follows:

Line 1: Enter the start date for each period.

For example, if a conservator files an account and budget that is due on September 30, 2012, for the period from July 1, 2011 to June 30, 2012:

- *Column A will have a start date of July 1, 2010,*
- *Columns B and C will have a start date July 1, 2011, and*
- *Column F will have a start date of July 1, 2012.*

Line 2: Enter the end date for each period. *Using the preceding example, the end date is June 30 one year later than the start date.*

CAUTION: transactions are reported on SCHEDULE 1 when money is received or money is disbursed by the conservatorship. In accounting terms, transactions are recognized on a cash basis: you list receipts and disbursements when money effectively changes hands.

For example, if a cost is incurred but not paid before the end of a reporting period, the cost is not listed as a disbursement until paid in a future reporting period; however, any unpaid bills are listed with liabilities on SCHEDULE 2.

CAUTION: Receipts reported on SCHEDULE 1 includes any receipt of any money as income but also includes the distribution or liquidation of any asset.

CAUTION: When supporting detail is required on a separate sheet of paper, place a header on the supporting detail that identifies the schedule, line and, if appropriate, column that is detailed.

Line 3: Enter all regular and recurring income that is received as a result of retirement or disability, including but not limited to Social Security, Railroad Retirement, Pension Benefits, Social Security Disability, Supplemental Security Income, and worker's compensation benefits. Do NOT include distributions from tax-deferred investments, such as 401K and IRA funds.

Line 4: Enter all income that is received from annuities, structured settlements or trust income that is not already included in Line 3.

Line 5: Enter all wages and earned income of the protected person that is not included in Lines 3 or 4.

Line 6: Enter all investment and business income, including but not limited to interest, dividend, rent, and royalty income that is not included in Lines 3, 4 or 5.

Line 7: Enter any other receipts that are not included in Lines 3 through 6, including any other income, any distributions from tax-deferred investments, such as 401K or IRA

funds, any amount received from selling an asset, or the cash proceeds from any new loan to the protected estate. Attach a detailed statement explaining the other receipts.

Line 8: Add lines 3 through 7 in each column to calculate the Total Receipts reported for each column.

Line 9: Enter the amount that is included in Line 8 that came from selling or liquidating an asset or from incurring a new liability.

For example, if you receive a required distribution from an IRA fund which pays out the earnings as well as some amount of the principal, enter the total distribution on Line 7 and enter the amount of the principal received on Line 9.

For example, if you receive the proceeds from an installment sale over a period of years, and this year you received interest on the unpaid balance plus a payment on the balance due, enter the total payment received this year on Line 7 and enter the principal portion of the receipts on Line 9.

For example, if you sell an asset, such as a residence, enter the net amount received on Line 7 and enter the same amount on Line 9.

For example, if the conservatorship borrows money to pay the bills of the protected person, enter the amount of the new loan on Line 9 and include as a liability on SCHEDULE 2.

Line 10: Subtract Line 9 from the Total Receipts on Line 8.

Line 11: Enter the disbursements for goods or services provided to a protected person that are essential for survival, excluding medical costs but including food, clothing, and shelter for the protected person. A disbursement for food, clothing, and shelter is considered essential for survival even if there are less expensive alternative options for food, clothing, and shelter.

For example: enter the recurring fees to a care facility, required companions or care providers, food, clothing, toiletries, utilities, or household expenses including home mortgage payments.

Line 12: Enter all of the medical payments for the protected person that are not included on Line 11, including but not limited to medical, dental, optical, hearing, medical equipment and supplies, prescription and non-prescription medicines, insurance premiums and co-pays.

Line 13: Enter the amount of funds that are released directly to the protected person as a spending allowance. Do NOT report how the protected person expended these funds.

Line 14: Enter the amount of debt service payments on debts, such as loans and personal debts of the protected person.

- Do NOT include the home mortgage payment on the residence where the protected person resides (this is reported on Line 11).
- Do NOT include as debt service any disbursements for obligations incurred in a prior period of the conservatorship, such as fiduciary and attorney fees and costs. Report these amounts in the appropriate expenditure category when paid.

For example, if the fiduciary earned a fee in one period, but the fee was paid in a later period, the payment is reported as a disbursement on Line 18 when paid, NOT Line 14. Until this obligation is paid, it will be included in SCHEDULE 2, Line 14 as one of the listed liabilities. Any operating bills of the conservatorship are treated in the same manner, such as fees to care providers that are incurred but not paid until a later year

For example, if the protected person has an outstanding credit card debt that was incurred before a conservator was appointed, the debt service payments on this debt are reported on Line 14.

Line 15: Discretionary expenditures means all goods and services provided to a protected person that are not essential for survival but are designed to improve or prolong the quality and enjoyment of life for the protected person. Discretionary care does NOT include expenditures that are included on another line on SCHEDULE 1.

Line 16: Report other disbursements that are made for the protected person but not included on another line on SCHEDULE 1. Attach supporting detail explaining the other expenditures.

For example, if a residence was purchased for the protected person, report the cash down-payment on Line 16, mortgage payments on Line 11, and list the mortgage as liability on SCHEDULE 2. (see Line 24 where this down-payment is also entered)

For example, if the Court authorizes the purchase of an annuity or the investment in marketable securities, such as a mutual fund or publically traded stocks, enter the amount invested on Line 16 (see Line 24 where this purchase is also entered)

Line 17: Enter the sum of Lines 11 through 16.

Line 18: Enter the expenditures for Fiduciary Fees and Costs. Fees are compensation paid to the Fiduciary. Costs include administrative charges, such as mileage, filing fees, and postage. Costs do NOT include funds advanced for the benefit of a protected person, such as disbursements for food, clothing and shelter.

Line 19: Enter the Fiduciary's Attorney Fees and Costs.

Line 20: Enter the Protected Person's Attorney Fees and Costs, including court-appointed counsel and guardian ad litem.

Line 21: Report other disbursements that are a cost of administration of the conservatorship but NOT included on another line on SCHEDULE 1, such as an appraiser, financial advisor, court investigator, or accountant. Attach supporting detail explaining the other expenditures.

Line 22: Enter the sum of Lines 18 through 21.

Line 23: Add Lines 17 and 22.

Line 24: Enter the amount that is included in Line 23 that paid all or part of the principal balance of a liability and enter any amount that was disbursed to purchase an asset for the conservatorship.

Line 25: Subtract Line 24 from the Total Disbursements on Line 23.

Line 26: Enter Line 8 minus Line 23. If the amount is positive, this is a Surplus. If the amount is negative, this is a Shortfall.

Line 27: Enter Line 10 minus Line 25. If the amount is positive, this is the amount by which income exceeds expenses. If the amount is negative, this is the amount by which expenses exceed the income of the conservatorship.

SCHEDULE 2: Statement of Net Assets & Reconciliation

Columns Instructions:

You may be required to use all of the columns in SCHEDULE 2 or just some of the columns, depending if the report covers a new or existing conservatorship.

Complete Column A if you filed a SCHEDULE 2 last year; this information is presented for comparison purposes only, and can be copied directly from Column B of last year's SCHEDULE 2, including the statement date. If the conservatorship was in existence last year, but you were appointed as a successor conservator

and this is your first conservator's account, you are not required to use Column A to report the activity of the preceding conservator.

Complete Column B for either of the following purposes:

- If you were recently appointed as Conservator, use Column B and Lines 1 through 15 to report the inventory of the protected estate, as required by A.R.S. §14-5418(A); or,
- If you are filing your annual conservator's account, use Column B to update the protected estate's assets and liabilities for the year just ended.

If you complete Columns A and B, then you will also compute Columns C and D, which show the dollar amount and percent of change, respectively, from last year to this year. The mathematical calculation is shown in the header to Columns C and D.

Complete Column E to explain the changes; if more space is required, file an explanation as supporting detail.

Line Instructions:

Once you have determined which columns of SCHEDULE 2 you are required to complete, please complete each row as follows:

Line 1: Enter the date of the statement, as follows:

- If you are only filing an inventory, enter the date of your appointment as Conservator.
- If you are filing your first conservator's account, Column A is the date of your appointment as Conservator, and Column B is the end date of your first conservator's account (this is the same date as found on SCHEDULE 1, Column C, Line 2).
- After your first conservator's account, Column A is the end date of your prior account (this is found on SCHEDULE 1, Column A, Line 2), and Column B is the end date of your current conservator's account (this is found on SCHEDULE 1, Column C, Line 2).

CAUTION: If you were recently appointed and are filing your original inventory, you must supplement SCHEDULE 2 with a detailed listing of all significant assets and liabilities of the protected person. Assets and liabilities are deemed significant if the asset or liability has a valuation of not less than \$100 AND has a

valuation in excess of \$2,000 or 1% of the value of the net estate, whichever is less.

CAUTION: When filing your original inventory, you are required to provide a valuation of all the property; however, some assets are easy to value, like bank accounts, but some assets are difficult to value, like real estate, and may require the services of a professional appraiser. The inventory that is reported after your appointment is more formal and must meet this standard, including filing an amendment if an error or omission is discovered. However, when filing an annual conservator's account, you are not required to file another formal inventory but only provide an update on the net assets of the estate, including your good faith estimate of changes in valuation, which may be based upon your personal opinions.

CAUTION: Income reported on SCHEDULE 1 does NOT include any distributions, dividends, interest or gains from tax deferred investments, such as an IRA account; any distribution or withdrawal of funds from tax deferred investments is treated as a liquidation of a non-liquid asset and reported on Line 19 of SCHEDULE 2.

Line 2